

1 JOSEPH H. HUNT  
Assistant Attorney General  
2 GUSTAV W. EYLER  
Director  
3 Consumer Protection Branch  
ALAN P. PHELPS  
4 Assistant Director  
NATALIE N. SANDERS  
5 Trial Attorney  
Consumer Protection Branch  
6 U.S. Department of Justice  
450 5th Street, NW, Suite 6400-South  
7 Washington, D.C. 20530  
Telephone: (202) 598-2208  
8 Facsimile: (202) 514-8742  
E-mail: Natalie.N.Sanders@usdoj.gov

9 Attorneys for Plaintiff  
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 EASTERN DIVISION  
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 CALIFORNIA STEM CELL  
19 TREATMENT CENTER, INC.,  
20 *et al.*

21 Defendants.  
22  
23  
24

No. 5:18-CV-01005-JBG-KKx

**PLAINTIFF'S UNOPPOSED *EX PARTE*  
APPLICATION FOR BRIEF  
EXTENSION OF TIME TO FILE  
PLAINTIFF'S REPLY REGARDING  
ITS MOTION FOR SUMMARY  
JUDGMENT**

Summ. J. Hearing: Dec. 9, 2019  
Trial Date: Feb. 11, 2020

Hon. Jesus G. Bernal

**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that Plaintiff United States of America hereby makes this unopposed *ex parte* application (“Application”) for an order continuing the deadline to serve Plaintiff’s Reply Regarding Its Motion For Summary Judgment (“Reply”) by 11 days – from September 13, 2019 to September 24, 2019. Defendants California Stem Cell Treatment Center, Inc., Cell Surgical Network Corporation, Elliot B. Lander, M.D. and Mark Berman, M.D. (collectively, “Defendants”), through their counsel, do not oppose this Application.

Good cause exists to grant this Application, as follows:

- The requested continuance of the deadline is to accommodate a serious medical injury recently sustained by Plaintiff’s lead trial attorney (“Counsel”), who has been handling this matter since its inception. Complications from Counsel’s unexpected injury frustrate her ability to meet the current filing deadline, despite her diligence.
- The requested and unopposed continuance will not result in prejudice to any of the parties.
- The requested and unopposed continuance will not impact any other court-ordered deadlines.

This unopposed *ex parte* application is based on this Application, the attached memorandum of points and authorities, the concurrently filed declaration of Natalie N. Sanders (“Sanders Decl.”), the pleadings on file in this action, and any other matter as the Court may consider in connection with this Application.

**STATEMENT OF CONFERENCE OF THE PARTIES**

This Application is made following the conference of counsel which took place on September 10, 2019. Undersigned Counsel gave notice of this development as soon as she realized there was no alternative course of action to address the ongoing challenges posed by her health condition. Undersigned Counsel has conferred with counsel for

1 Defendants, Matthew M. Gurvitz (“Gurvitz”)<sup>1</sup> of Venable LLP, who stated that  
2 Defendants do not oppose Plaintiff’s Application. Sanders Decl. ¶¶ 5-7.

3  
4 Dated: September 10, 2019.

5 Respectfully submitted,

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7 /s/ Natalie N. Sanders  
8 NATALIE N. SANDERS  
9 Trial Attorney  
10 Consumer Protection Branch  
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*Counsel for United States of  
America*

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<sup>1</sup> Per Local Rule 7-19, Gurvitz’s contact information is as follows: Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, CA 90067; (310) 229-9930; and MMGurvitz@Venable.com.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Good cause exists to grant Plaintiff's unopposed *ex parte* request for a brief extension of the time to file its Reply.

Plaintiff's Reply is due to be served on September 13, 2019. For reasons set forth herein, Plaintiff respectfully requests a brief continuance of this deadline to September 24, 2019.

**FACTS**

On July 8, 2019, Plaintiff timely filed its Motion for Summary Judgment ("Motion") in the above-captioned matter, which was noticed for hearing on August 5, 2019. Dkt. No. 45.

On July 10, 2019, the Court issued a Minute Order, on its own motion, continuing the hearing on Plaintiff's Motion to December 9, 2019, and ordering the parties to propose a revised briefing schedule and revised pretrial deadlines. Dkt. No. 56.

On July 24, 2019, the parties filed a joint stipulation, Dkt. No. 57, containing the following proposed briefing schedule:

- Defendants' opposition shall be due by August 9, 2019 ("Opposition").
- Plaintiff's reply shall be due by September 13, 2019.

On July 25, 2019, the Court issued an Order Regarding Briefing Schedule and Pre-Trial Schedule ("Order") granting the parties' proposed briefing schedule. The Order also set the Final Pre-Trial Conference for January 27, 2020, and Trial for February 11, 2020. Dkt. No. 58.

On August 17, 2019—eight days after Defendants' Opposition was filed—Plaintiff's lead trial counsel ("Counsel") sustained a serious musculoskeletal injury to her neck, back, and shoulder. Declaration of Natalie N. Sanders ("Sanders Decl.") ¶ 2. Counsel's unexpected injury has caused her severe, and at times, debilitating pain over the past four weeks. *Id.* Although Counsel has continued working diligently on the Reply and related filings, her injury has significantly impacted her ability to handle her casework in this matter. *Id.* ¶¶ 3-4.

Without a brief continuance of the Reply deadline, Counsel lacks the requisite time needed to finalize the Reply and related filings. *Id.* ¶ 5.

### **ARGUMENT**

#### **Good Cause Exists To Grant This Application**

Good cause exists pursuant to Rules 16(b)(4) and 6(b)(1) of the Federal Rules of Civil Procedure to modify the upcoming filing deadline for Plaintiff's Reply in this matter. *Ex parte* relief is warranted and justified in this case because (1) Plaintiff will be irreparably prejudiced absent *ex parte* relief; and (2) Plaintiff is without fault for creating the circumstances warranting *ex parte* relief. *See* Schwarzer, et al., RUTTER GROUP PRACTICE GUIDE: FED. CIV. PROC. BEFORE TRIAL, CAL., ¶ 12:170 ("RUTTER GUIDE"), citing *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

A pre-trial scheduling may be continued and modified by the Court for good cause shown. Fed. R. Civ. Proc. 16(b)(4); *see also* Fed. R. Civ. Proc. 6(b)(1) (continuance may be granted for good cause if, as here, request is made before original time to act expires). If a party has acted in due diligence, but will have difficulty in meeting a scheduled pre-trial deadline, good cause exists for continuance or modification of the deadline. *See Zivkovic v. Southern California Edison*, 302 F. 3d 1080, 1087 (9th Cir. 2002). The focus of the court's inquiry is on the moving party's reasons for continuance, and not on the prejudice to the other parties in the case. *Johnson v. Mammoth Recreations, Inc.*, 975 F. 2d 604, 608 (9th Cir. 1992). That said, the brief 11-day continuance that Plaintiff seeks will not prejudice the Defendants, as ample time would remain before the Motion hearing on December 9.

As further noted in the Declaration of Natalie N. Sanders, and in this *ex parte* Application, Counsel for Plaintiff has been suffering, and currently still suffers, with the effects of a physically debilitating injury that occurred approximately one week into the five-week briefing window provided for Plaintiff's Reply. Although Counsel has

1 diligently continued to work on the Reply and related filings since sustaining her injury,  
2 her condition has significantly limited her for the past four weeks. Counsel's condition  
3 makes it extremely painful to sit in a chair or use a computer for extended periods of  
4 time – as these activities cause severe pain in her neck, back, and shoulder. Counsel's  
5 condition has also required her to take sick leave, see specialists, undergo medical  
6 imaging, wear a neck brace, and take prescription medication, among other things.  
7 Sanders Decl. ¶ 4.

8 Because Counsel is the only trial attorney in her office assigned to this case, she  
9 alone has the background and experience to handle Plaintiff's Reply. Despite Counsel's  
10 diligent efforts to work through her injury and meet the current filing deadline, it has  
11 become apparent that a brief continuance is necessary. Accordingly, Plaintiff  
12 respectfully requests a brief continuance to permit Counsel to finalize the Reply and its  
13 related filings at a pace consistent with the practical limitations of her injury. *Id.* ¶ 5.  
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### 15 CONCLUSION

16 For the foregoing reasons and pursuant to the foregoing authorities, Plaintiff  
17 United States hereby respectfully requests that the Court grant this Application for an  
18 order extending the deadline to file Plaintiff's Reply by 11 days—from September 13,  
19 2019 to September 24, 2019. No other court-ordered deadlines will be affected.  
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21 Dated: September 10, 2019

22 Respectfully submitted,

23  
24 /s/ Natalie N. Sanders  
25 NATALIE N. SANDERS  
26 Trial Attorney  
27 Consumer Protection Branch

28 *Counsel for United States of  
America*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of September 2019, I electronically filed a true and correct copy of the foregoing PLAINTIFF'S UNOPPOSED *EX PARTE* APPLICATION FOR BRIEF EXTENSION OF TIME TO FILE PLAINTIFF'S REPLY REGARDING ITS MOTION FOR SUMMARY JUDGMENT, through the Court's CM/ECF system, which will send a notice of electronic filing to the following counsel of record listed below:

Celeste M. Brecht  
Matthew M. Gurvitz  
Norma N. King  
Witt W. Chang  
VENABLE LLP

/s/ Natalie N. Sanders  
NATALIE N. SANDERS